IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 1104 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 24/06/2004 in WP No: 1527 of 2003 on the file of the High Court.)

Between:

P.Pratap Reddy, S/o.Venkatrami Reddy,
R/o.D.No.6/1564, Sankarapuram,

Cuddapah Town & Dist.

..... APPELLANT

AND

1.The Commissioner of Prohibition & Excise, A.P.Hyderabad.
2.Prohibition & Excise Superintendent,

Cuddapah, Cuddapah Dist.
3.Prohibition and Excise Inspector, Cuddapah, Cuddapah Dist.

....RESPONDENTS

Counsel for the Appellant: MR.V.R.REDDY KOVVURI

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following Order: (per Sri BRSR.J)

The unsuccessful petitioner is the appellant in this writ appeal preferred against the order dated 24.6.2004 made in W.P.No.1527 of 2003. The learned single Judge dismissed the writ petition filed by the appellant herein against the proceedings of the 2nd respondent in issuing show cause notice dated 17.1.2003 demanding him to pay a sum of Rs.71,000/- on account of conversion of licence granted and renewed in his favour under the provisions of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for short 'the 1970 Rules').

The appellant herein was granted I.L 24 licence for the excise year 1998-99. According to him, on account of some financial difficulties, he made an application to the 2nd respondent seeking permission to include one M.Jayakumar Reddy as partner. The petitioner was accordingly called upon to pay a sum of Rs.1,000/- as per Rule 34(2) of the A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licenses) Rules, 1993 (for short "the 1993 Rules") for inclusion of another person as partner. The 2nd respondent, after receiving the payment, permitted the inclusion of the said person as partner vide proceedings dated 20.5.2000.

Thereafter, the 3rd respondent herein by the impugned show cause notice, demanded the appellant to pay a sum of Rs.71,000/- on the strength of the objection raised by the auditor that as per Rule 38 of the A.P. Indian Liquor and Foreign Liquor

Rules, 1970, whenever the character of a licenced entity changes due to the proposed inclusion/exclusion of partners, the same amounts to transfer of licence and it must be sent to the Commissioner of Prohibition and Excise for approval. In such a case, the fee would be 10% of the licence fee chargeable under Rule 38(2) of the 1970 Rules.

The case of the appellant is that the licensing authority, in exercise of the power under Section 34(2) of the 1993 Rules, accorded permission to include the name of the said Jayarami Reddy as one of the partners on payment of Rs.1,000/- as provided for under Rule 34(2) of the Rules and therefore there is no further liability upon the appellant to pay any further amounts. The sum and substance of the case of the learned counsel for the appellant is that Rule 38 of the 1970 Rules has no application to the fact situation. It is also contended by the learned counsel for the appellant that the order of the licensing authority under Section 34(2) of the 1993 Rules is of no consequence unless an order is passed by the Commissioner transferring the licence. There is no transfer of licence as such under any valid order passed by the Commissioner. Therefore, the question of payment of 10% of the fee chargeable for grant or renewal or continuance of any such licence does not arise.

We express our inability to agree with the submission made by the learned counsel for the appellant. Sub-Rules (4) and (5) of Rule 38 of the 1970 Rules are very clear and categorical. Rule 38(4) declares that when there are only two partners in the firm holding the licence and one of them withdraws or expires, the entity of the firm is changed from partnership to proprietory. It amounts to transfer. Likewise, Rule 38(5) declares that conversion of a proprietory concern into a firm or a company or a firm into a company and vice versa shall amount to transfer of licence.

In the instant case, admittedly, licence was granted to the appellant herein as a proprietory concern. The moment he sought for permission to include Jayakumar Reddy as one of the partner, the proprietory concern gets itself transferred into a partnership firm. Such inclusion amounts to transfer of licence within the meaning of sub-Rule (4) of Rule 38 of 1970 Rules requiring the licensee to pay 10% of the fee chargeable for grant or renewal or continuance of such licence. The contingency envisaged under sub-Rules (4) and (5) of Rule 38 of 1997 Rules once takes place the same notwithstanding any formal order of Commissioner amounts to transfer of licence necessitating payment of 16% of licence fee. The moment the proprietory concern is converted into a firm, it automatically amounts to transfer of licence. No

formal order as such of the Commissioner is required to be passed. Sub-Rule (1) of Rule 38 does not cover the contingencies and situation provided for under sub-Rules (4) and (5) of Rule 38.

The appellant herein voluntarily got the proprietory concern converted into a partnership firm and on account of such conversion, the licence automatically stood transferred into newly formed partnership firm. The conversion itself amounts to transfer requiring no further orders to be passed by the commissioner.

For the aforesaid reasons, we are not inclined to interfere with the order passed by the learned single Judge dismissing the writ petition. The demand from the respondents requiring the appellant to pay the specified amount is perfectly valid in law. We find no merit in the appeal. However, no coercive steps shall be taken as against the appellant for realising the demanded amount for a period of 10 weeks from today.

The Writ Appeal shall accordingly stand dismissed. No order as to costs.

(B.SUDERSHAN REDDY,J)

DT.27.7.2004

(K.C.BHANU,J)

msv.

DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1.The Commissioner of Prohibition & Excise, A.P.Hyderabad.
2.The Prohibition & Excise Superintendent,

Cuddapah, Cuddapah Dist.
3.The Prohibition and Excise Inspector, Cuddapah, Cuddapah Dist.

4. 2 CCs to Government Pleader for Prohibition & Excise, High Court Buildings, High Court of Andhra Pradesh, Hyderabad.

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